

September 14, 2010

Lewis County Planning Commission
Old Historic Courthouse
Commissioners Hearing Room - 2nd Floor
351 NW North Street
Chehalis, WA 98532

RE: Application #156, Forecastle Forestry Designation

Dear Planning Commission Members,

We are writing on behalf of Forecastle Timber Company to address an issue that has arisen in connection with Forecastle's proposal to redesignate its 2200 acres of land at Mineral from Forest Land of Long-Term Commercial Significance to Forest Land of Local Importance: namely, whether such redesignation constitutes a "de-designation" or removal of such land from its designation as a forest resource land under RCW 36.70A.170 of the Growth Management Act (GMA). Based on our review of the applicable County Comprehensive Plan policies and development regulations, the applicable provisions of the GMA, and the cases construing such provisions, we think that redesignating the Forecastle land from Forest Land of Long-Term Commercial Significance to Forest Land of Local Importance would not affect its legal status as forest resource lands under the GMA and would comply with the goals and requirements of the GMA.

The GMA imposes three obligations on counties planning under the GMA regarding forest lands:

First, the county must designate "forest lands that are not already characterized by urban growth and that have long term commercial significance for the commercial production of timber." RCW 36.70A.170(1)(b). The GMA defines "forest lands" and "long term commercial significance" and sets forth factors for designation of forest resource lands. RCW 36.70A.030(8), (10). In making these designations, counties must also consider the minimum guidelines established in WAC 365-190. RCW 36.70A.050, 060(2).

Second, the county must adopt development regulations "to assure the conservation of" those forest lands designated under RCW 36.70A.170. RCW 36.70A.060(1).

Third, the development of comprehensive plans and development regulations must be guided by GMA Goal No. 8:

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Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

RCW 36.70A.020(8).

Consistent with these GMA goals and requirements, Lewis County designated forest resource lands under the GMA and adopted policies for such lands in its Comprehensive Plan. *See* Comp. Plan, Natural Resource Land Sub-Element. These Comprehensive Plan policies create two classifications of GMA forest lands: Forest Lands of Long Term Commercial Significance and Forest Land of Local Importance. Both are defined as and considered GMA-mandated forest resource lands in the Comprehensive Plan, the only difference being that Forest Land of Local Importance is smaller than the minimum block of 5,000 contiguous acres, can have a minimum lot size of 20 acres, and can be designated through an "Opt In" process that commits that the property will remain in that designation for a minimum of 10 years. Comp. Plan at 4-56.

The County also adopted development regulations in LCC 17.30.420 *et. seq* that assure the conservation of GMA forest resource lands. They do so by limiting uses and density, creating setbacks, and requiring adjacent property notification of forest practices in order to maintain and enhance resource-based industries, encourage the conservation of productive forest lands and discourage incompatible uses. *See* LCC 17.30.440-540.

Consistent with the Comprehensive Plan, these development regulations acknowledge two categories of GMA forest resource lands, Forest Land of Long Term Commercial Significance and Forest Land of Local Importance. *See* LCC 17.30.140 (defines "forest land" consistent with the GMA definition for forest resource lands); LCC 17.30.430 (states that both categories of Forest Land meet the classification criteria for forest resource lands designated as such). They also create an "opt in" process and criteria for petitioning for designation as a Forest Land of Local Importance. The only distinction in the development regulations between Forest Land of Long Term Commercial Significance and Forest Land of Local Importance is that the minimum lot size of the latter is 20 acres instead of 80 acres. Otherwise, both categories of Forest Land are subject to all of the use limitations and other development regulations in the Code that are intended "to maintain and enhance resource-based industries, encourage the conservation of productive forest lands and discourage incompatible uses." LCC 17.30.440.

Based on these forest resource land policies in the Comprehensive Plan, and the development regulations implementing these policies, it is clear that Forest Land of Local Importance constitutes forest resource land under the GMA. Not only does such Forest Land meet all of the

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GMA criteria for designation of forest resource lands, but once designated, it is subject to all of the development regulations in LCC 17.30.420 *et. seq* that were adopted by the County to comply with RCW 36.70A.060—i.e., that were adopted “to assure the conservation of” those forest lands designated under RCW 36.70A.170. The only difference between Forest Land of Long Term Commercial Significance and Forest Land of Local Importance is that the former has a minimum block size of 5,000 contiguous acres and minimum lot size of 80 acres, whereas the latter has a smaller number of contiguous acres and minimum lot size of 20 acres. Neither difference affects compliance with the GMA. There is no requirement in the GMA that forest resource lands be designated in minimum 5,000-acre blocks, *see Manke Lumber Co. v. Diehl*, 91 Wn .App. 793, 809-10, 959 P.2d 1173 (1998) (local governments have a great deal of discretion in choosing threshold criteria for forest land designation under RCW 36.70A.170), and other counties have adopted a minimum lot size of 20 acres for their GMA forest resource lands that has been upheld by Growth Management Hearings Boards. *See, e.g. Island County Citizens' Growth Management Coalition*, WWGMHB Case No. 98-2-0023c (June 02, 1999) (“The choice of a minimum 20-acre parcel size criterion for forest land designation is within the County's discretion.”).

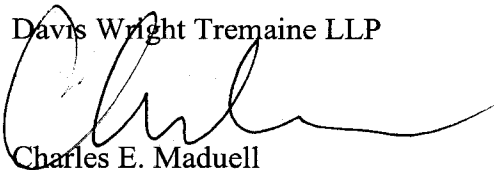
Thus, redesignation of the 2,200-acre Forecastle lands from Forest Land of Long Term Commercial Significance to Forest Land of Local Importance cannot reasonably be considered a “de-designation” of or removal from the GMA forest resource land designation since such lands, as Forest Land of Local Importance, would not only retain their status as forest resource lands under the GMA and Lewis County Comprehensive Plan, but would also remain subject to the use limitations and other development regulations governing use and development on forest resource lands.

I trust this analysis addresses any concerns about the legal effect of redesignation of the Forecastle forest lands.

Thank you for your consideration.

Very truly yours,

Davis Wright Tremaine LLP



Charles E. Maduell

cc: Glenn Carter, Chief Civil Prosecuting Attorney